IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 633 of 2000

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SITARAM YADAV - Petitioner(s)
Versus
TUTON PHARMACEUTICALS - Respondent(s)

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Appearance :
MRS SANGEETA N PAHWA for Petitioner(s) : 1,
MR DHAVAL SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/07/2007

ORAL JUDGMENT

1. Heard Mrs.Sangeeta Pahwa, learned counsel for the petitioner and Mr.Dhaval Shah, learned counsel for the respondent.

2. The petitioner workman, being partly aggrieved by the award dtd.19/1/1999 passed by the learned Labour Court, Ahmedabad in Reference (LCA) No. 564 of 1985, is before this Court with submissions that the court below erred in directing that the petitioner should be reinstated in the services as a fresh appointee and further erred in not giving any benefits of back wages, continuity in service etc.

3. Short facts necessary for disposal of the writ application are that the employer issued a chargesheet to the employer saying the following charges;

> “That the workman was creating commotion and a surcharged atmosphere in the factory premises which was leading to unrest in no work amongst the daily wagers, supervisors and chemists and (2) by creating such a surcharged atmosphere, which had adversely affected the production in the factory.”

4. After making an inquiry, the employer found the present petitioner guilty of the charges and after providing further hearing, removed the employee from service. Being aggrieved by the said award of punishment, the

workman had filed the reference. The learned court below, after recording the evidence and hearing the parties found that the Charge No.2 was not proved, but, without recording a single finding that the Charge No.1 was proved, observed that in view of the charge and evidence available on the records, the award of punishment of removal from service was not proper, therefore, interfered on the question of punishment and directed fresh appointment of the petitioner.

5. Mrs.Pahwa, learned counsel for the petitioner submitted that in absence of a positive finding on Charge No.1, the court below was unjustified in directing fresh appointment, instead of reinstatement.

6. Mr.Dhaval Shah, learned counsel for the respondent, on the other hand, submitted that the award made by the learned court below is patently illegal, because, if the court had held that any charge is proved, then the Labour Court could not interfere on the quantum of punishment, unless it had observed that the punishment was shockingly disproportionate to the misconduct.

7. The findings recorded by the learned Labour Court are based on appreciation of evidence. Though, Mrs.Pahwa, learned counsel for the petitioner submitted that the

person who was directly affected by the threat, has not been examined, but in the opinion of this Court, non-examination of such person, at best, may lead to some inference against the employer, but, if the employer provides some other evidence which satisfies the judicious conscience of the court, then, quality of the evidence, instead of quantity of the evidence, is to be seen.

8. After going through the award made by the learned Labour Court, I must hold that the Labour Court was certainly of the opinion that the Charge No.1 stands proved.

9. So far as the question of interference in quantum of punishment is concerned, this Court would not interfere in the matter, because, the other-side has not filed any cross petition.

10. I do not find any good reason to interfere in the matter. The petition deserves to and is accordingly dismissed. Interim relief, if any, is vacated. Rule is discharged. No costs.

(R.S. GARG, J.)

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